

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #00-38**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Application of the sales and use tax to a cooperative direct mail advertising company.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the Department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling, and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

FACTS

[TAXPAYER] is in the direct mail advertising business. The taxpayer's principal place of business is in [STATE OTHER THAN TENNESSEE]. At this time the

taxpayer does not solicit or sell its services in Tennessee. The taxpayer does have a single employee who resides in Tennessee. That employee maintains a home office, and the taxpayer provides certain office equipment so that this employee can work from home. This employee engages in sales activities with customers located in other states.

The taxpayer presently solicits merchants outside of Tennessee to purchase advertising to be inserted into packages of direct mail advertising, some of which will be mailed to postal patrons in Tennessee. This direct mail advertising always involves advertising or inserts for more than one advertiser and is the taxpayer's sole and exclusive business. The mailings may include printed advertising, coupons, or both.

Advertising material is set up or designed by the taxpayer, or the merchant provides the taxpayer with its own material. This set up work is done outside of Tennessee. The advertising materials set up by the taxpayer and those provided by the merchants are shipped to a facility outside of Tennessee where printing, production and mailing occur. Mailing to postal patrons in Tennessee and other states then follows. The advertising materials are not delivered to the taxpayer's customers but go directly to the postal patrons.

The taxpayer's customers are charged a fee per quantity (for example, per one thousand) for the mailing inserts. This fee is based on the cost of set up (when applicable), printing, production and mailing services, plus a mark up for the taxpayer's services.

QUESTIONS

1. Is the presence of a home office as described in the facts given sufficient connection to Tennessee to impose sales or use tax on the taxpayer?
2. Is the taxpayer's sale of direct mail advertising as described in the facts given exempt from the Tennessee sales tax?
3. Is the taxpayer's distribution of direct mail advertising materials in Tennessee as described in the facts given exempt from the Tennessee use tax?

RULINGS

1. Yes. The home office described in the facts given is sufficient to create nexus with Tennessee for the imposition of sales and use tax.
2. Yes. The sale of cooperative direct mail advertising as described in the facts given is exempt from the Tennessee sales tax.

3. Yes. The distribution of cooperative direct mail advertising materials as described in the facts given is exempt from the Tennessee use tax.

ANALYSIS

1. The United States Constitution limits the power of a state to impose its taxes to those taxpayers that have nexus with the state. Quill Corporation v. North Dakota, 504 U.S. 298, 305 (1992). In the context of sales and use taxes, the Constitution requires physical presence to satisfy the Commerce Clause, and it requires minimum contacts to satisfy the Due Process Clause. Id. The presence of an employee and employer-provided equipment in a state satisfies the nexus requirements for state taxation of the employer. Id. at 306 and 315; Tyler Pipe Industries v. Washington State, 483 U.S. 232, 249-51 (1987). The taxpayer's employee and equipment in Tennessee enjoy the protection of Tennessee police and fire departments, and the taxpayer has access to the Tennessee court system for the protection of that employee and property. The presence in Tennessee of an employee and employer-provided equipment establish the taxpayer's nexus with Tennessee for the purpose of imposing the Tennessee sales and use tax on the taxpayer.

2. & 3. Tennessee provides an exemption from the sales and use tax for cooperative direct mail advertising.

(a) The tax imposed by this chapter does not apply to the sale or use of direct mail advertising materials which are distributed in Tennessee from outside the state by a person engaged solely and exclusively in the business of providing cooperative direct mail advertising.

(b) For the purpose of this section:

(1) "Cooperative direct mail advertising" means the business of providing advertising in the form of discount coupons or advertising leaflets for more than one (1) business which are delivered by mail in a single package to potential customers of businesses subscribing to the cooperative direct mail advertising; and

(2) "Direct mail advertising materials" means discount coupons and advertising leaflets, including accompanying envelopes and labels. Tenn. Code Ann. § 67-6-344.

This statute provides an exemption from the sales and use tax for cooperative direct mail advertising. The taxpayer's activities as described in the facts given are within the parameters of this statutory exemption. Therefore, the sale and distribution of the advertising materials at issue are exempt from the Tennessee sales and use tax. The sale of advertising services, to the extent that such services are sold in Tennessee, are not subject to the Tennessee sales or use tax. Tenn. Comp. R. & Regs. 1320-5-1-.99(1).

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APPROVED: Ruth E. Johnson
Commissioner of Revenue

DATE: 10/6/00